IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9250 OF 2005

Shaikh Mustafa Yasin Petitioner
versus
Sharad G. Tisgaonkar & others Respondents

Mr.I.S.Thakur for petitioner.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 1st February 2006

PC :

1. Heard Shri Thakur for the petitioner. Perused the order passed by the Trial Court allowing amendment to a plaint.

2. The petitioner-defendant submits that the amendment could not have been granted as the same changes the cause of action and re-opens the concluded issues pertaining to a will which is executed long time back and probated as well. It is contended by Shri Thakur very forcefully that the amendment is not formal in nature. Moreso, it has been granted after the trial has commenced and the Court has not assigned any reason as to why it is permitting the petitioner-plaintiff to

amend the plaint in Special Civil Suit No.113 of 1994.

3. In my view, upon perusal of the plaint and more particularly paras 3 and 4 thereof, it is clear that all averments pertaining to the will are already incorporated and appropriate submissions made. All that the respondent-plaintiff desires is to incorporate two prayers/ reliefs in the relief clauses so that the narration becomes complete and in any event if he succeeds, the decree can be appropriately worded and thereafter executed. A formal amendment allowing addition of two prayers thus does not prejudice the petitioner. All contentions including that the abovementioned pleas are barred by principles of res-judicata or any other principle analogous thereto including limitation, are open for being agitated and merely because the plaint is allowed to be amended, the petitioner is not prevented from raising them at an appropriate stage and upon same being raised, the Trial Court is not prevented, despite granting the amendment, from considering them and passing appropriate orders in accordance with law. Petition disposed of.

(S.C.DHARMADHIKARI, J.)